IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

Crl.Rev.Pet.No. 1031 of 2000(B)

CC.84/2000 of CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA
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REVN. PETITIONER:

A.L. SHAJI, S/O. A.P. ISMAIL,
ANTHINATTU HOUSE,
THODUPUZHA.

BY ADV. SRI.SHAIJAN C.GEORGE
SRI.P.P.THAJUDEEN

RESPONDENTS:
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1. M.H. SALIM, MATTAYIL, KUMBAMKALLYKARA,
KARIKODE VILLAGE.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR MR. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.1031 of 2000

DATED THIS THE 19th day of March 2007

ORDER

The revision petitioner is the complainant in the proceedings initiated by him under Section 138 of the Negotiable Instruments Act and 420 I.P.C. The order impugned is the one discharging the accused on his application. It is submitted that the court below has taken cognizance of the offence under Section 420 I.P.C.only. It is the grievance of the revision petitioner that the offence under Section 138 of the Negotiable Instruments Act will certainly lie.

2. Although served notice the respondent/accused, he did not enter appearance.

3. In view of the fact that the complaint has been filed under Section 138 of the Negotiable Instruments Act also the court below ought to have considered the case on merits instead of not taking cognizance of the offence under Section 420 I.P.C.only. The case of the complainant is that a sum of Rs.1,70,000/- was borrowed by the accused and in order to discharge the above liability the impugned cheque was issued.

4. In the circumstances, the order of the court below is set aside and the court below is directed to proceed against the accused under

Section 138 of the Negotiable Instruments Act and dispose of the case on merits. The revision petitioner shall appear before the Chief Judicial Magistrate, Thodupuzha on 22-4-2007. The Crl.revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P.NO.1031 of 2000

ORDER

19-3-2007